

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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OMAR VILLALBA and JOANNE VILLALBA

Plaintiff,

ROBO-BREAKING CO., INC., NATIONAL  
RAILROAD PASSENGER CORPORATION  
d/b/a AMTRAK, AECOM USA, INC., f/k/a  
DMJM+HARRIS, INC.,

Defendants.  
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AECOM USA, INC.,

Defendant/Third-Party Plaintiff,

vs.

SKANSKA USA CIVIL NORTHEAST INC., f/k/a :  
SLATTERY SKANSKA, INC

Third-Party Defendants.  
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**DECLARATION OF MICHAEL DENNIS BOSSO IN  
SUPPORT OF THE DEFENDANT/THIRD-PARTY  
PLAINTIFF'S AECOM USA, INC. f/k/a DMJM+HARRIS, INC.  
MOTION FOR SUMMARY JUDGMENT**

1. I am a non-equity partner at the firm Colleran, O'Hara & Mills, L.L.P., attorneys for the Defendant/Third-Party Plaintiff AECOM USA, INC. f/k/a DMJM+HARRIS, INC. ("AECOM") in the above-referenced action.

2. I submit this Declaration in support of AECOM's motion pursuant to Rule 56 of the Federal Rules of Civil Procedure ("F.R.C.P.") for an Order and Judgment dismissing the Plaintiffs', OMAR VILLALBA and JOANNE VILLALBA (collectively referred to herein as the "VILLALBAS"), Amended Verified Complaint and the cross-claims of co-defendant

NATIONAL RAILROAD PASSENGER CORPORATION d/b/a AMTRAK (“AMTRAK”) in their entirety.

3. Upon information and belief, the underlying action was initially commenced on January 4, 2011, when the VILLALBAS filed a Summons and Complaint against Robo-Breaking Co., Inc. (“Robo”) and AMTRAK in the Supreme Court of the State of New York, County of Queens.

4. Upon further information and belief, Defendant AMTRAK removed this action to the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1349. Upon further information and belief, the VILLALBAS filed an Amended Verified Complaint in the Eastern District of New York on April 19, 2011. A copy of the Summons and Amended Verified Complaint is annexed hereto as Exhibit “A”.

5. In their Amended Verified Complaint, the VILLALBAS alleged that OMAR VILLALBA was injured on March 24, 2010 due to the negligence of AECOM, Robo and AMTRAK while performing work in the course of his employment as a drill runner with SKANSKA USA CIVIL NORTHEAST INC. f/k/a SLATTERY SKANSKA, INC. (“SKANSKA”) at the 1st Avenue Ventilation Shaft Rehabilitation Project in New York, New York (hereinafter referred to as “the Project”). See Exhibit “A”, ¶’s 40-41.

6. In their Amended Verified Complaint, the VILLALBAS allege that, on March 24, 2010, OMAR VILLALBA was caused to sustain serious personal and bodily injuries at the Project when he was caused to fall through a hole while working upon an elevated platform. Id.

7. As a result of the alleged accident, the VILLALBAS asserted claims against AECOM for violations of §200, §240(1) and §241(6) of New York State Labor Law, as well as §12 N.Y.C.R.R. 23. See Id. at ¶48.

8. On or about May 10, 2011, AECOM submitted an Answer to the Verified Amended Complaint denying the material allegations therein. A copy of AECOM's Answer to the Amended Verified Complaint is annexed hereto as Exhibit "B".

9. On or about May 12, 2011, AMTRAK submitted an Answer to the Verified Amended Complaint. A copy of AMTRAK's Answer to the Amended Verified Complaint is annexed hereto as Exhibit "C".

10. On or about June 1, 2011, Defendant/Third-Party Plaintiff AECOM filed a Third-Party Complaint against Third-Party Defendant SKANSKA asserting claims for contractual indemnity. A copy of the Third-Party Complaint is annexed hereto as Exhibit "D".

11. On or about July 29, 2011, Third-Party SKANSKA filed its Answer to the Third-Party Complaint. A copy of SKANSKA's Answer to the Third-Party Complaint is annexed hereto as Exhibit "E".

12. On or about February 24, 2012, the parties to this action released Robo from the instant case pursuant to a Stipulation of Discontinuance that was filed with this Court. A copy of the Stipulation of Discontinuance is annexed hereto as Exhibit "F".

13. On September 9, 2011, Plaintiff OMAR VILLALBA was deposed. A copy of his deposition transcript is annexed hereto as Exhibit "G".

14. On February 17, 2012, Amtrak's Bridge and Building Inspector, Michael J. Dunn, was deposed. A copy of his deposition transcript is annexed hereto as Exhibit "H".

15. On March 1, 2012, AECOM's Project Manager, Sam Perelmuter, was deposed. A copy of his deposition transcript is annexed hereto as Exhibit "I".

16. On March 2, 2012, SKANSKA's Project Superintendent, Willie Cruz, was deposed. A copy of his deposition transcript is annexed hereto as Exhibit "J."

17. On September 6, 2012, AECOM's Safety Engineer, Warren Gaskill, was deposed. A copy of his deposition transcript is annexed hereto as Exhibit "K."

18. On November 14, 2012, SKANSKA's Site Safety Manager, Philip Zazzera, was deposed. A copy of his deposition transcript is annexed hereto as Exhibit "L".

19. Upon information and belief, AMTRAK entered into a contract with AECOM whereby AECOM agreed to provide construction management services for AMTRAK on the Project. A copy of the Contract between AMTRAK and AECOM is annexed hereto as Exhibit "M".

20. Upon information and belief, AMTRAK entered into a contract with SKANSKA whereby SKANSKA agreed to serve as the General Contractor on the Project. A copy of the Contract between AMTRAK and SKANSKA is annexed hereto as Exhibit "N."

21. Upon information and belief, SKANSKA issued an accident report on April 6, 2010. A copy of the accident report is annexed hereto as Exhibit "O".

Dated: June 21, 2013  
Garden City, New York

Respectfully Submitted,

/S/  
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By: MICHAEL DENNIS BOSSO (MB-3941)  
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